

Senate Bill 82

By: Senators Hamrick of the 30th, Schaefer of the 50th, Hudgens of the 47th, Cagle of the 47th, Cagle of the 49th, Shafer of the 48th and others

AS PASSED**AN ACT**

To amend Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to financial institutions, so as to supplement definitions relating to financial institutions; to define time parameters for meeting notices; to implement personnel policies; to promulgate regulations promoting parity with federal financial institutions; to prohibit certain persons from participating in financial institutions; to enumerate the department's powers as a receiver; to allow Georgia and federal courts access to financial information; to lengthen the time for closure of stock transfer books; to protect the shareholders during bank conversions, mergers, and consolidations; to enumerate filings required to form a credit union; to require notice to the department when articles are amended; to provide procedures for out-of-state credit unions; to enumerate the powers of credit unions; to provide for expulsion of members; to provide for dividends and interest payments; to provide for subsidiaries; to provide for mergers of credit unions; to provide for conversion of credit unions; to update the powers of central credit unions; to authorize third-party payment services; to update the financial requirements for licensure of mortgage brokers; to update licensure requirements for mortgage brokers; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to financial institutions, is amended by striking paragraph (32) in Code Section 7-1-4, relating to definitions regarding financial institutions, and inserting a new paragraph (31.1) to read as follows:

"(31.1) 'Savings bank' means a state chartered bank that has powers no greater than a state bank as provided in this chapter but that may lend and invest in commercial loans in an aggregate amount that does not exceed 50 percent of its total assets. Such bank may elect, subject to department approval, or the department may require, that the savings

bank comply with selected provisions of the Home Owners' Loan Act of 1933 that in the judgment and discretion of the department would be consistent with the charter and purpose of the bank. For the purposes of this paragraph, the term 'commercial loan' means a loan for business, commercial, corporate, or agricultural purposes.

(32) 'State savings and loan association' means a bank which pays interest on substantially all of its depositors' funds and the majority of whose loans are secured by first liens on or other security interest in residential real property or upon the security of its deposits."

SECTION 2.

Said chapter is further amended by striking paragraph (1) of Code Section 7-1-6, relating to notice requirements, and inserting in its place the following:

"(1) Any notice required to be given under this chapter may be delivered in person by first-class mail, or by telegram, charges prepaid, to the last known address of the person or corporation or to the registered office of the corporation. If the notice is sent by mail or by telegram, it shall be deemed to have been given when deposited in the United States mail or with a telegram office. If such notice is of a meeting, it shall specify the place, day, and hour of the meeting. Notice of a meeting of shareholders shall be given not less than ten nor more than 60 days before the meeting. Notice of a special meeting shall specify the general nature of the business to be transacted."

SECTION 3.

Said chapter is further amended by striking subsection (a) of Code Section 7-1-35, relating to appointment of a senior deputy commissioner and other personnel, and inserting in its place the following:

"(a) The commissioner shall appoint from time to time, with the right to discharge at will, a senior deputy commissioner of banking and finance. The commissioner may appoint additional deputy commissioners as needed. All deputy commissioners shall also be ex officio examiners. The commissioner may appoint such additional examiners and assistants as he or she may need to discharge in a proper manner the duties imposed upon the commissioner by law, subject to any applicable state laws or rules or regulations and within the limitations of the appropriation to the department as prescribed in this chapter. Hiring, promotion, and other personnel policies of the department shall be consistent with guidelines or directives of the state, shall be in writing, and shall be made available upon request to employees of the department."

SECTION 4.

Said chapter is further amended by striking paragraph (2) of subsection (b) and subsections (c), (d), and (e) of Code Section 7-1-61, relating to promulgation of rules and regulations by the department, and inserting in their place the following:

"(2) The authority of any federally chartered bank, as the term 'bank' is defined in Code Section 7-1-621, operating pursuant to federal law, regulation, or authoritative pronouncement;"

"(c) Rules and regulations promulgated by the department may provide for controls, registration, or restrictions reasonably necessary to:

(1) Prevent unfair or deceptive business practices which are prohibited under Code Section 10-1-393;

(2) Prevent deceptive or misleading business practices by financial services providers which may occur by way of alternate delivery systems for the provision of financial products and services such as the Internet or other telecommunication capabilities; or

(3) Prevent or control unfair or deceptive business practices which would operate to the detriment of any competing business or enterprise or to persons utilizing the services of any financial institution, its subsidiary, or affiliate.

(d) All rules and regulations shall be promulgated in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' including the requirements for hearing as stated in that chapter. Regulations issued under this or other provisions of this chapter may make appropriate distinctions between types of financial institutions and may be amended, modified, or repealed from time to time.

(e) To provide parity with other federally insured financial institutions, the commissioner may, by specific order directed to an individual financial institution or category of financial institutions, modify or amend the following qualifying or limiting requirements imposed on financial institutions by this chapter:

(1) Collateral requirements and limits on the amount of obligations owing to it from any one person or corporation;

(2) Loan to value or other limitations in lending;

(3) Limitations on the amount of investments in stock or other capital securities of a corporation or other entity;

(4) Limitations on the amount of bank acceptances to be issued; and

(5) If Georgia law has been determined to be federally preempted, other limitations or restrictions on financial institutions contained in this chapter.

No such order will be issued unless the commissioner determines that such activity will not present undue safety and soundness risks to the financial institution or institutions involved. In making such a determination, the commissioner shall consider the financial condition and regulatory safety and soundness ratings of the institution or institutions affected and the ability of management to administer and supervise the activity. Any such order pursuant to this subsection will be available for public review."

SECTION 5.

Said chapter is further amended by striking Code Section 7-1-71, relating to removal of officers, directors, and employees of financial institutions, and inserting in its place the following:

"7-1-71.

(a) The department, by order of the commissioner, shall have the right to require the immediate suspension from office of any director, officer, or employee of any financial institution and to prohibit any such person's participation in the affairs of any financial institution if the department finds such person:

- (1) To be dishonest, incompetent, or reckless in the management of the affairs of the financial institution;
- (2) To have persistently violated the laws of this state;
- (3) To have violated the lawful orders, regulations, or conditions of a written agreement of or with the department;
- (4) To have been indicted for any crime involving moral turpitude or breach of trust;
- (5) To have evidenced an inability to conduct his or her own financial affairs or the affairs of a company in which such individual owns a majority interest or has responsibility for financial matters, in a fiscally responsible, diligent, or lawful fashion;
- or
- (6) To have engaged in any unsafe or unsound practice in connection with any insured depository institution or to have demonstrated willful or continuing disregard for the safety and soundness of a financial institution.

(b) A prohibition order, which prohibits an individual from participating in any capacity in the affairs of a financial institution, may be issued by the commissioner in connection with a suspension order issued under the authority of this Code section. Such prohibition order may provide that if an officer, director, or employee has been removed from office temporarily or permanently at a financial institution, he or she may also be prohibited from

participating in any manner in the conduct of the affairs of any financial institution during the time the prohibition order is in effect.

(c) The department shall serve written notice upon the party of its determination to suspend such person from office or prohibit such person from participating in the affairs of a financial institution pursuant to subsections (a) and (b) of this Code section. A suspension order or a prohibition order shall be effective upon such service and shall specify whether the suspension is temporary, the duration and terms of the suspension if temporary, or if it is permanent. The prohibition order shall be consistent in duration with the suspension order.

(d) Any person suspended or prohibited under this Code section may request his or her reinstatement in writing delivered to the department within ten days of his or her suspension or prohibition. If such reinstatement is not requested, the director, officer, or employee shall be considered permanently removed and, if so ordered, permanently prohibited from participation in the affairs of any financial institution.

(e) Upon request for reinstatement, the department shall conduct an internal review of the matter during which such person has the opportunity to state his or her case to the commissioner. The department shall deliver the findings of the hearing to such person. If the person requests further review, the department may refer the matter to the state agency for administrative hearings under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' where a nonpublic hearing shall be held to review the department's decision. The final decision of the department shall be conclusive, except as it may be subject to judicial review under Code Section 7-1-90.

(f) Any order issued pursuant to this Code section shall also be delivered to the financial institution with which the party was associated at the time such order was issued."

SECTION 6.

Said chapter is further amended by striking subsection (c) of Code Section 7-1-151, relating to appointment of the department as a receiver, and inserting in its place the following:

"(c) In any proceeding for the appointment of a receiver of an institution whose deposits or shares are insured by a public body of the United States, the court may upon the recommendation of the department (whether or not the department is a party) appoint said public body or its administrator as receiver. If said public body or its administrator accepts the appointment, it or he or she shall have all the rights, powers, and duties of the department as receiver under this chapter and all the rights, powers, and duties as conferred

by other applicable law. The public body or its administrator may act as receiver without bond."

SECTION 7.

Said chapter is further amended by striking subparagraph (c)(2)(F) of Code Section 7-1-288, relating to corporate stock and securities, and inserting in its place the following:

"(F) A corporation or limited liability company engaged in functions or activities that the bank or trust company is authorized to carry on, including, but not limited to: conducting a safe-deposit business; holding real estate; acting as a financial planner or investment adviser; offering of a full range of investment products; promoting and facilitating international trade and commerce; and exercising powers incidental to financial activities as provided in paragraph (11) of Code Section 7-1-261; in addition to functions or activities which include exercising powers granted by department regulations or exercising powers determined by the commissioner to be financial in nature or incidental to the provision of financial services, so long as these activities do not pose undue risk to the safety and soundness of the financial institution and are consistent with the objectives of this chapter as stated in Code Section 7-1-3; provided, however, unless the bank is exempt, nothing contained in this subparagraph shall relieve any such corporation or limited liability company from undertaking registration, licensing, or other qualification to engage in such functions or activities as may otherwise be required by law; and".

SECTION 8.

Said chapter is further amended by striking paragraph (2) of subsection (a) and subsection (c) of Code Section 7-1-360, relating to third-party claims to deposits, and inserting in their place the following:

"(2) Where the records of accounts or other customer records are requested through subpoena or other administrative process issued by a state, federal, or local administrative agency having competent jurisdiction over the depositor or other customer or where such records are requested pursuant to Georgia or federal law governing civil practice or procedure in conjunction with an ongoing civil action in a Georgia state or federal court of competent jurisdiction;"

"(c) Each customer or depositor to whom notice of an order, subpoena, or request for disclosure, examination, or production of records was lawfully given may, prior to the date specified therein for disclosure, examination, or production, file in the court issuing an

order or subpoena for the records or in the Georgia or federal court where the civil matter is being heard or, in the absence of such a court, in the superior court of the county in which the financial institution is located a motion to quash the order, subpoena, or request or for a protective order and shall serve such motion on the party requesting disclosure and the financial institution as may be otherwise provided by law for similar motions. Failure to file and serve such motion to quash or for protection shall constitute consent for all purposes to disclosure, production, or examination made pursuant to this Code section."

SECTION 9.

Said chapter is further amended by striking subsections (a) and (b) of Code Section 7-1-433, relating to the closure of stock transfer books, and inserting in their place the following:

"(a) For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a bank or trust company may provide that the stock transfer books shall be closed for a stated period not to exceed, in any case, 70 days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting.

(b) In lieu of closing the stock transfer books, the bylaws or, in the absence of an applicable bylaw, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than 70 days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action requiring such determination of shareholders is to be taken."

SECTION 10.

Said chapter is further amended by striking paragraph (1) of subsection (a) of Code Section 7-1-550, relating to conversions and mergers of state and national banks, and inserting in its place the following:

"(1) Compliance with the applicable laws of the United States, including any provisions thereof relating to approval of said conversion, merger, or consolidation by the shareholders and directors of the national bank and to dissenting rights of shareholders in such national bank, and compliance with any other requirements prescribed by the department to protect the shareholders or members or the safety and soundness of the institution;".

SECTION 11.

Said chapter is further amended by inserting new subsections (d) through (g) into Code Section 7-1-630, relating to organization of credit unions, to read as follows:

"(d) The subscriber shall file with the department a certificate from the Secretary of State attesting that the name of the proposed credit union has been reserved as authorized by Code Section 7-1-131.

(e) The subscriber shall file with the department two copies of proposed bylaws setting forth the following:

(1) The date of the annual meeting, the manner of conducting the same, the number of members constituting a quorum and regulations as to voting, and the manner of notification of the meeting, which shall comply with Code Section 7-1-6, except that, if the credit union maintains an office and the board of directors so determines, notice of the annual meeting or of any special meeting may be given by posting such notice in a conspicuous place in the office of the credit union at least ten days prior to such meeting;

(2) The number of directors, which must be not less than five, all of whom must be members, and their powers and duties, together with the duties of the officers elected by the board of directors;

(3) The qualifications for membership of those coming within the initial common bond as required by this article;

(4) The conditions under which shares may be issued, paid for, transferred, and withdrawn; deposits received and withdrawn; loans made and repaid; and funds otherwise invested; and

(5) The charges which shall be made, if any, for failure to meet obligations punctually; whether or not the credit union shall have the power to borrow; the method of receipting for money; the manner of accumulating a reserve; the manner of determining and paying interest and dividends; and such other matters consistent with this article as may be requisite to the organization and operation of the proposed credit union.

(f) The subscriber shall pay such fee as shall be established by regulation of the department to defray the cost of the investigation required by Code Section 7-1-632, provided that the department shall not be required to set such fee if in its judgment the fee would discourage the organization of credit unions under this article.

(g) The subscriber shall select at least five qualified persons who agree to serve on the board of directors. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, shall be executed by those who so agree and filed with the department along with the proposed bylaws."

SECTION 12.

Said chapter is further amended by repealing Code Section 7-1-631, relating to documents to be filed when organizing a credit union, and designating said Code section as reserved as follows:

"7-1-631.

Reserved."

SECTION 13.

Said chapter is further amended by striking subsection (b) of Code Section 7-1-632, relating to departmental approval of the incorporation of a credit union, and inserting in its place the following:

"(b) If the department determines to its satisfaction that the proposed credit union meets the criteria set forth above, it shall, within 90 days from receipt of the articles and in compliance with Code Section 7-1-630, send a copy of the articles and written approval of the articles to the Secretary of State after making such changes in the articles or bylaws consistent with this article and with the consent of the subscribers that it deems appropriate. Such approval shall indicate any changes made to the articles including changes from the proposed field of membership. If the department shall disapprove the articles, the procedures of subsection (b) of Code Section 7-1-635 shall be followed."

SECTION 14.

Said chapter is further amended by redesignating subsection (c) of Code Section 7-1-634, relating to amendment of articles and bylaws of a credit union, as subsection (e) and inserting new subsections (c) and (d) to read as follows:

"(c) The credit union may amend its bylaws to change its field of membership by adding additional groups of persons subject to the following conditions:

- (1) Each new group must have a common bond that meets one of the descriptions in subsection (b) of Code Section 7-1-630; and
- (2) The credit union must pay such fee as may be established by the department to defray the cost of investigation.

(d) The department shall grant or deny approval of a complete and accepted application to amend the bylaws within 90 days, subject to safety and soundness and other criteria established by the department for these applications."

SECTION 15.

Said chapter is further amended by striking subsections (a) and (b) of Code Section 7-1-635, relating to department approval for amendments to articles or bylaws, and inserting in their place the following:

"(a) The department shall, in its discretion, approve or disapprove of proposed amendments to the articles or to the bylaws within 90 days after they are submitted by the credit union and within that time shall so advise the Secretary of State of any changes to the articles and inform the credit union in writing of its approval or disapproval.

(b) If the department should disapprove any articles or proposed amendments to articles or bylaws, it shall state the reasons for its disapproval. The subscribers or credit union shall have reasonable time, not more than 90 days from the date of disapproval or such additional time as the department may allow, to correct any matters causing its disapproval. If such matter is corrected, the department shall then advise the Secretary of State and credit union in writing of its approval of changes to the articles or the credit union alone in writing of its approval in the case of amendment of the bylaws."

SECTION 16.

Said chapter is further amended by striking paragraphs (2), (3), and (4) of subsection (a) of Code Section 7-1-635.1, relating to out-of-state credit unions, and inserting in their place the following:

"(2) Is financially solvent and operates in conformance with the laws and regulations of its charter jurisdiction

(3) Has deposit insurance comparable to that required for credit unions chartered in this state."

SECTION 17.

Said chapter is further amended by striking Code Section 7-1-650, relating to powers of a credit union, in its entirety and inserting in its place the following:

"7-1-650.

A credit union shall have, in addition to the powers common to all corporations under the laws of this state, the following powers:

(1) It may receive funds from its members or other financial institutions in the form of shares and deposits on accounts or as evidenced by certificates of deposit issued by the credit union but shall not have the power to offer third-party payment services except as authorized under Code Section 7-1-670;

- (2) It may receive savings deposits from nonmembers in such manner as the bylaws may provide, but such deposits may not be subject to check and may not bear a greater rate of interest than the rate of interest paid to members for the same class of deposit;
- (3) It may make loans to members subject to approval by its credit committee or authorized employees pursuant to Code Section 7-1-658;
- (4) It may also invest, on the authority of its board of directors or by employees authorized by the board of directors, funds in the following manner:
 - (A) In obligations of the United States, including bonds and securities upon which payment of principal and interest is fully guaranteed by the United States; obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, or any corporation designated in Section 846 of Title 31 of the United States Code as a wholly owned government corporation; or in obligations, participations, or other instruments of or issued by or fully guaranteed as to principal and interest by the Federal National Mortgage Association or the Government National Mortgage Association;
 - (B) In general and direct obligations of the State of Georgia, its counties, districts, and municipalities which have been validated as provided by law, if no more than 25 percent of the shares and deposits of a credit union shall be invested in the obligations of any one such obligor;
 - (C) In loans to other credit unions, provided the loans do not exceed 10 percent of the shares, deposits, and surplus of the investing credit union;
 - (D) By depositing its funds in banks, building and loan associations, savings and loan associations, and other credit unions; by purchasing certificates of deposit and savings certificates which such financial institutions are authorized to issue; and by selling or purchasing federal or correspondent (daily) funds or loan participations through such financial institutions; subject to limitations prescribed in regulations issued by the department; and
 - (E) In any other types of investments authorized by the department, including commercial paper, provided such investments shall not, in the aggregate, exceed 10 percent of the shares, deposits, and surplus of the investing credit union. In lieu of the foregoing limitation, any credit union may invest up to 15 percent of its equity capital as defined by the department in authorized investments issued by any single obligor;
- (5) It may borrow from any source, but the total of such borrowings shall at no time exceed 50 percent of paid-in shares, deposits, and surplus. The department may, notwithstanding the other provisions of this Code section, temporarily waive the

requirements of this paragraph to permit an individual credit union to borrow for emergency purposes;

(6) It may undertake with the approval of the department other activities which are not inconsistent with this chapter or regulations adopted pursuant thereto, including such powers as are afforded to federally chartered credit unions, either directly, through a subsidiary corporation, or in cooperation with other credit unions; provided, however, no such approval shall be granted unless the commissioner determines the activities do not present undue safety and soundness risks to the credit union involved;

(7) It may organize and engage in business without having any stated amount of capital subscribed or paid in other than that derived from the subscribers' qualifying shares, may commence business with only such capital authorized and paid in as may be provided in its bylaws, and may provide for the payment and withdrawal thereof as and in the manner provided by its bylaws;

(8) It may purchase, hold, and convey real estate for the following purposes only:

(A) Such real estate as shall be necessary for the convenient transaction of its business, subject to the prior approval of the department;

(B) Such real estate as shall be conveyed to it in satisfaction of debt previously contracted in the course of its business; and

(C) Such real estate as it shall purchase at sales under judgments, decrees, or mortgage foreclosures pursuant to mortgages or security deeds held by it;

(9) No real estate acquired in the cases provided for by subparagraphs (B) and (C) of paragraph (8) of this Code section and no real estate which has ceased to be used as credit union premises shall be held for a longer period than five years, unless the time shall be extended by the department. Properties, other than real estate, which are acquired in satisfaction of debts previously contracted and which a credit union is not otherwise authorized to own shall be held for no longer than six months unless such time period is extended by the department. Disposition of such property may be financed by the credit union without the advance of additional funds irrespective of the purchasers' membership in the credit union and of ordinarily applicable collateral margin requirements;

(10) It may provide through an amendment to its bylaws which shall be approved by two-thirds of its membership present and voting as otherwise provided in this part for the elimination or limitation of the personal liability of a director to the members in their capacity as shareholders of the credit union to the same extent as a bank or trust company operating under the provisions of this chapter."

SECTION 18.

Said chapter is further amended by designating the existing text of Code Section 7-1-653, relating to expulsion or withdrawal of members of a credit union, as subsection (a) and inserting a new subsection (b) to read as follows:

"(b) A member may be expelled for reasons defined in the bylaws by a two-thirds' vote of the board of directors. An expelled member may obtain reinstatement by an affirmative vote of the majority of the members voting at the next annual meeting of the credit union."

SECTION 19.

Said chapter is further amended by striking paragraphs (1) and (6) of subsection (a) of Code Section 7-1-656, relating to the duties of the board of directors of a credit union, and inserting in their place the following:

"(1) To act upon all applications for membership or approve the actions of an officer without loan granting authority, designated by the board of directors to approve applications for membership;"

"(6) To have charge of the investment of funds of the credit union other than loans to members within the restrictions imposed by statute or delegate investment authority to a qualified committee or officer as designated by the board of directors; and".

SECTION 20.

Said chapter is further amended by striking Code Section 7-1-660, relating to dividends and interest paid by a credit union, and inserting in its place the following:

"7-1-660.

At such intervals and for such periods as the board of directors may authorize, dividends and interest from retained earnings may be declared at such rates as are determined by the board, provided that such dividends and interest shall not be paid until provision for the transfer to the allowance for loan losses has been made. Dividends or interest in excess of 100 percent of a credit union's net earnings before dividends shall be approved in writing by the department prior to payment, provided that an application from a credit union with net worth equal to or in excess of the requirements for a well-capitalized credit union, as defined by the National Credit Union Administration rules and regulations shall be deemed to be approved five business days after the receipt of the dividend approval form by the department unless the department notifies the credit union that the dividend is not approved within this period. The proposed dividend or interest may be paid after approval by the department upon its determination that such payment would be in the continued best

interest of the credit union, would promote its stability, and would not impair its ability to repay its creditors other than its shareholders and depositors."

SECTION 21.

Said chapter is further amended by striking Code Section 7-1-663, relating to departmental regulations governing credit unions, and inserting in its place the following:

"7-1-663.

Without limitation on the authority conferred by Article 1 of this chapter, the department is authorized to make such rules and regulations not inconsistent with this article and other applicable statutes governing the operation of credit unions as it may consider reasonable and proper for the protection of all funds invested. The department shall solicit comments from credit unions at least annually for recommended changes to the department's rules and regulations."

SECTION 22.

Said chapter is further amended by striking Code Section 7-1-665, relating to subsidiary offices of a credit union, and inserting in its place the following:

"7-1-665.

A credit union shall not be prohibited from maintaining offices at locations other than its principal offices if the maintenance of such offices shall be reasonably necessary to furnish service to its membership. The establishment of additional offices shall be subject to the prior approval of the department upon application to it in such form as it may prescribe by regulation. Participation in shared branching networks does not constitute the establishment of additional offices under this Code section."

SECTION 23.

Said chapter is further amended by striking subsection (a) of Code Section 7-1-667, relating to credit union mergers, and inserting in its place the following:

"(a) A credit union may, with the approval of the department and in accordance with such uniform rules and regulations as it shall make and promulgate, be merged with another credit union under the articles of such credit union, upon any plan agreed upon by the majority of the board of each credit union joining the merger and approved by not less than two-thirds of the members of each credit union present and eligible to vote at meetings called for that purpose. The department may allow waiver of the member vote if in its judgment the merger is necessary to protect the safety and soundness of either or both

credit unions. All property, property rights, and interests of the credit union so merging shall, upon merger, be transferred to and vested in the credit union under whose articles the merger is effected without deed, endorsement, or other instrument of transfer; and the debts and obligations of the credit union so merging shall be deemed to have been assumed by the credit union under whose articles the merger is effected; and thereafter the articles of the credit union so merging shall be void."

SECTION 24.

Said chapter is further amended by striking Code Section 7-1-668, relating to conversions of state and federal credit unions, and inserting in its place the following:

"7-1-668.

(a) Any credit union operating in this state may convert into a federal chartered credit union, and any federal credit union may convert into a credit union organized under this chapter upon approval of the authority under whose supervision the converted credit union will operate and upon compliance with applicable federal laws as to a converted federal credit union and upon compliance with applicable state laws as to a converted credit union. In the case of a federal credit union converting to a state credit union, such converting credit union may keep its existing members at the time of conversion, but after conversion eligibility for membership in the converted credit union must comply with state law. If there are other areas of noncompliance with state law, the credit union must provide the department with a plan to bring those areas into compliance with Georgia law within a reasonable period, to be determined by the department.

(b) The procedure for obtaining such approval and effecting the conversions in the case of a credit union shall be as follows:

(1) A meeting of the board of directors, either regular or special, shall be called for the purpose of voting on converting from a federal credit union to a credit union or from a credit union to a federal credit union. A majority of the board of directors shall adopt a resolution approving the contemplated conversion;

(2) A meeting, either regular or special, of the shareholders shall then be called for voting on the proposed conversion. Notice of said meeting shall be given in the manner prescribed in Code Section 7-1-6 and shall include a statement indicating that the proposed conversion will be considered at the meeting. Proof of giving of the notice shall be by the affidavit of the president of the credit union. A majority of the members present at this meeting shall then approve the proposed conversion;

(3) Within ten days after such approval of the conversion, the president or vice-president and treasurer shall file a verified copy of the resolution adopted by the board of directors with the state or federal authority under whose supervision the converting credit union is to operate.

(c) Upon the written approval of the department for conversions to credit unions and with the written approval of the National Credit Union Administration for conversions to federal credit unions, the converting credit union shall then become a credit union under the laws of this state or the United States, as the case may be; and thereupon all assets shall become the property of the new credit union or federal credit union, as the case may be, subject to all existing liabilities, and every person who was a member of the converting credit union shall be a member in the new credit union or federal credit union.

(d) Conversions by state chartered credit unions to financial institutions other than credit unions shall be effected by approval of the department and compliance with any other applicable law. Procedures provided in subsection (b) of this Code section shall be followed for obtaining approval and effecting such conversions, provided that two-thirds of the members voting shall be required to approve a proposed conversion. The department may prescribe other requirements in order to protect the rights of members or the funds invested."

SECTION 25.

Said chapter is further amended by striking subsections (a) and (e) of Code Section 7-1-669, relating to a central credit union, and inserting in their place the following:

"(a) A 'central credit union' means a credit union which is organized to serve a field of membership which consists primarily of other credit unions operating pursuant to this chapter, any other state credit union law, or the Federal Credit Union Act. A central credit union may be organized and operated under this chapter and subject to all provisions of this chapter which are not inconsistent with this Code section. Such credit union shall use the word 'central' in its name."

"(e) A central credit union may:

- (1) Make loans to other credit unions, but loans to any one credit union shall not exceed:
 - (A) For unsecured loans and lines of credit, excluding pass-through and guaranteed loans from the Central Liquidity Fund and the National Credit Union Share Insurance Fund, no more than 50 percent of capital; or

(B) For secured loans and lines of credit, excluding those secured by shares or marketable securities and member reverse repurchase transactions, no more than 100 percent of capital.

For the purposes of this paragraph, the definition of capital shall be consistent with federal law and regulations. The department may utilize other definitions found in the National Credit Union Administration rules and regulations in interpreting this subsection;

- (2) Make loans to other members as specified in Code Section 7-1-658;
- (3) Purchase shares of and make deposits in other credit unions;
- (4) Obtain or acquire the assets and liabilities of any credit union which enters into liquidation;
- (5) Invest in and grant loans to associations of credit unions and to organizations chartered to provide service to credit unions; and
- (6) Borrow money and accept deposits from any source."

SECTION 26.

Said chapter is further amended by redesignating existing subsection (d) of Code Section 7-1-670, relating to third-party payment services offered by credit unions, as subsection (e) and inserting a new subsection (d) to read as follows:

"(d) A credit union that is approved to offer third-party payment services may apply to the department to offer other services, such as check-cashing services, sale of money orders, or international remittances, which services are determined by the department to be safe, sound, convenient, and necessary and responsive to those consumers eligible for membership. The department may impose restrictions on these services if approved."

SECTION 27.

Said chapter is further amended in Code Section 7-1-680, relating to definitions applicable to sale of checks or money orders, by redesignating paragraphs (2) through (5) of subsection (a) as paragraphs (3) through (6), respectively, and by inserting a new paragraph (2) to read as follows:

"(2) 'Check holder' means a person who has purchased a check from a check seller or a person who has placed an order to transmit money with a money transmitter."

SECTION 28.

Said chapter is further amended by striking subsection (c) of Code Section 7-1-683, relating to license applications and bonding, and inserting in its place the following:

"(c) As an option to the bond for check sellers, provided the department approves, in lieu of such corporate surety bond or bonds or of any portion of the principal thereof, the applicant may deposit with a bank or trust company located in this state, as such applicant may designate and the department may approve, certificates of deposit insured by a federal agency, bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof or guaranteed by the United States or of the State of Georgia or of a municipality, county, school district, or instrumentality of the State of Georgia or guaranteed by the state to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond or portion thereof. These assets shall be held to secure the same obligations as would the surety bond; but the licensee shall be entitled to receive all interest thereon and shall have the right, with the approval of the department, to substitute other assets approved by this Code section for those deposited and shall be required to do so on written order of the department made for good cause shown; provided, however, if the licensee substitutes assets more than once during the license period the department may charge a fee for the processing of such substitution to be prescribed by regulations of the department. In the event of the failure or insolvency of such licensee, the assets, any proceeds therefrom, and the funds deposited pursuant to this Code section shall be applied to the payment in full of claims arising out of transactions in this state for the sale or issuance of checks. This subsection shall apply to check sellers only and not to money transmitters."

SECTION 29.

Said chapter is further amended by striking paragraph (10) of Code Section 7-1-1000, relating to definitions applicable to mortgage lenders and brokers, and inserting in its place the following:

"(10) 'Misrepresent' means to make a false statement of a substantive fact. Misrepresent may also mean to intentionally engage in any conduct which leads to a false belief which is material to the transaction."

SECTION 30.

Said chapter is further amended by striking paragraph (1) of subsection (b) of Code Section 7-1-1003, relating to licensing mortgage lenders or mortgage brokers, and inserting in its place the following:

"(1) The legal name and address of the applicant and, if the applicant is a partnership, association, corporation, or other business entity, of every member, officer, and director thereof;"

SECTION 31.

Said chapter is further amended by striking Code Section 7-1-1003.2, relating to financial requirements for licensing mortgage brokers, in its entirety and inserting in its place the following:

"7-1-1003.2.

(a) Each licensed mortgage broker must provide the department with a bond. The bond for a mortgage broker shall be in the principal sum of \$50,000.00 or such greater sum as the department may require and the bond shall meet the other requirements of subsection (c) of this Code section.

(b) Except as otherwise provided in subsection (c) of this Code section, the department shall not license or register any mortgage lender unless the applicant or registrant provides the department with a bond. The bond for a mortgage lender shall be in the principal sum of \$150,000.00 or such greater sum as the department may require and which bond shall meet the other requirements of subsection (c) of this Code section.

(c) Bond requirements:

(1) The bond requirements for mortgage brokers and lenders are continuous in nature and must be maintained at all times as a condition of licensure; and

(2) The corporate surety bond shall be for a term and in a form satisfactory to the department, shall be issued by a bonding company or insurance company authorized to do business in this state and approved by the department, and shall run to the State of Georgia for the benefit of any person damaged by noncompliance of a licensee with this article, the 'Georgia Residential Mortgage Act,' or with any condition of such bond. Damages under the bond shall include moneys owed to the department for fees, fines, or penalties. Such bond shall be continuously maintained thereafter in full force. Such bond shall be conditioned upon the applicant or the licensee conducting his or her licensed business in conformity with this article and all applicable laws.

(d) As an alternative to a bond, an applicant or a licensee may supply an irrevocable letter of credit from a federally insured financial institution in form and terms acceptable and payable to the department.

(e) Any person including the department who may be damaged by noncompliance of a licensee with any condition of a bond or this article, the 'Georgia Residential Mortgage Act,' may proceed on such bond against the principal or surety thereon, or both, to recover damages."

SECTION 32.

Said chapter is further amended by striking subsections (a), (d), and (f) of Code Section 7-1-1004, relating to investigations of applicants for licensure, and inserting in their place the following:

"(a) Upon receipt of an application for license, the department shall conduct such investigation as it deems necessary to determine that the applicant and the individuals who direct the affairs or establish policy for the applicant, including the officers, directors, or the equivalent, are of good character and ethical reputation; that the applicant and such persons meet the requirements of subsection (d) of this Code section; that the applicant and such persons demonstrate reasonable financial responsibility; that the applicant has reasonable policies and procedures to receive and process customer grievances and inquiries promptly and fairly; and that the applicant has and maintains a registered agent for service in this state."

"(d) The department may not issue or may revoke a license if it finds that the applicant or licensee, or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant or licensee or any individual who directs the affairs or establishes policy for the applicant or licensee, has been convicted of a felony involving moral turpitude in any jurisdiction or of a crime which, if committed within this state, would constitute a felony involving moral turpitude under the laws of this state. For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof, and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered, unless and until such plea of guilty, or such decision, judgment, or verdict, shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both

probation and sentence of a first offender have been successfully completed and documented or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction was had or shall have received an official certification or pardon granted by the State Board of Pardons and Paroles which removes the legal disabilities resulting from such conviction and restores civil and political rights in this state."

"(f) Every licensee and applicant shall be authorized and required to obtain background checks on covered employees. Such background checks shall be handled by the Georgia Crime Information Center pursuant to Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information Center. Licensees and applicants shall be responsible for any applicable fees charged by the center. An applicant or licensee may employ a person whose background must be checked and has 90 days from the initial date of hire to obtain satisfactory background data. This provision does not apply to directors, officers, partners, agents, or ultimate equitable owners of 10 percent or more or to persons who direct the company's affairs or establish policy, whose background must have been investigated through the department before taking office, beginning employment, or securing ownership. Upon receipt of information from the Georgia Crime Information Center that is incomplete or that indicates an employee has a criminal record in any state other than Georgia, the employer shall submit to the department two complete sets of fingerprints of such person, together with the applicable fees and any other required information. The department shall submit such fingerprints as provided in subsection (e) of this Code section."

SECTION 33.

Said chapter is further amended by striking subsection (a) of Code Section 7-1-1005, relating to renewals of licenses and registrations, and inserting in its place the following:

"(a) Except as otherwise specifically provided in this article, all licenses and registrations issued pursuant to this article shall expire on June 30 of each year and application for renewal shall be made annually on or before April 1 of each year."

SECTION 34.

Said chapter is further amended by striking subsections (e) and (f) of Code Section 7-1-1006, relating to contents and posting of licenses, and inserting in their place the following:

"(e) Each licensee shall notify the department in writing of any change in the address of the principal place of business or of any additional location of business in Georgia, any change in registered agent or registered office, any change of principal officer, director, contact person for consumer complaints, or ultimate equitable owner of 10 percent or more of any corporation or other entity licensed under this article, or of any material change in the licensee's financial statement. Notice of a change in address of the main office or an approved branch location shall be submitted no later than 15 days before the change is made. Notice of other changes must be received by the department no later than 30 business days after the change is effective.

(f) No licensee shall open a new additional office in Georgia without prior approval of the department. Applications for such additional office shall be made in writing on a form prescribed by the department and shall be accompanied by payment of a \$350.00 nonrefundable application fee. The application shall be approved unless the department finds that the applicant has not conducted business under this article efficiently, fairly, in the public interest, and in accordance with law. The application shall be deemed approved if notice to the contrary has not been mailed by the department to the applicant within 30 days of the date the application is received by the department. "

SECTION 35.

Said chapter is further amended by striking paragraphs (1), (6), and (11) of Code Section 7-1-1013, relating to prohibited acts of mortgage lenders, and inserting in their place the following:

"(1) Misrepresent the material facts, make false statements or promises, or submit false statements or documents likely to influence, persuade, or induce an applicant for a mortgage loan, a mortgagee, or a mortgagor to take a mortgage loan, or, through agents or otherwise, pursue a course of misrepresentation by use of fraudulent or unauthorized documents or other means to the department or anyone;"

"(6) Engage in any transaction, practice, or course of business which is not in good faith or fair dealing, or which operates a fraud upon any person, in connection with the attempted or actual making of, purchase of, transfer of, or sale of any mortgage loan;"

"(11) Purposely withhold, delete, destroy, or alter information requested by an examiner of the department or make false statements or material misrepresentations to the department."

SECTION 36.

Said chapter is further amended by adding a new subsection (h) and by striking paragraph (1) of subsection (a) and subsection (d) of Code Section 7-1-1017, relating to suspensions or revocations of licenses, and inserting in their place the following:

"(a)(1) The department may suspend or revoke an original or renewal license or registration on any ground on which it might refuse to issue an original license or registration or for a violation of any provision of this article or of Chapter 6A of this title or any rule or regulation issued under this article or under Chapter 6A of this title, including failure to provide fees on a timely basis, or for failure of the licensee or registrant to pay, within 30 days after it becomes final, a judgment recovered in any court within this state by a claimant or creditor in an action arising out of the licensee's or registrant's business in this state as a mortgage lender or mortgage broker or for violation of a final order previously issued by the department."

"(d) A decision of the department denying a license or registration application, original or renewal, shall be conclusive, except that it may be subject to judicial review under Code Section 7-1-90. A decision of the department suspending or revoking a license or registration shall be subject to judicial review in the same manner as a decision of the department to take possession of the assets and business of a bank under Code Section 7-1-155."

"(h) Whenever the department initiates an administrative action against a current licensee, the department may pursue that action to its conclusion despite the fact that a licensee may withdraw its license or fail to renew it."

SECTION 37.

Said chapter is further amended by striking subsections (b) and (c) of Code Section 7-1-1018, relating to cease and desist orders, and inserting in their place the following:

"(b) Whenever a person shall fail to comply with the terms of an order of the department which has been properly issued under the circumstances, the department, upon notice of three days to such person, may, through the Attorney General, petition the principal court for an order directing such person to obey the order of the department within the period of time as shall be fixed by the court. Upon the filing of such petition, the court shall allow a motion to show cause why it should not be granted. Whenever, after a hearing upon the merits or after failure of such person to appear when ordered, it shall appear that the order of the department was properly issued, the court shall grant the petition of the department."

(c) Any person who violates the terms of any order issued pursuant to this Code section shall be liable for a civil penalty not to exceed \$1,000.00. Each day during which the violation continues shall constitute a separate offense. In determining the amount of penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of such person, the good faith efforts of such person to comply with the order, the gravity of the violation, the history of previous violations by such person, and such other factors or circumstances as shall have contributed to the violation. The department may at its discretion compromise, modify, or refund any penalty which is subject to imposition or has been imposed pursuant to this Code section. Any person assessed as provided in this subsection shall have the right to request a hearing into the matter within ten days after notification of the assessment has been served upon the person involved; otherwise, such penalty shall be final except as to judicial review as provided in Code Section 7-1-90."

SECTION 38.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 39.

All laws and parts of laws in conflict with this Act are repealed.